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SEP 20 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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PRACTICE LIMITED TO MATTERS BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

September 19, 1993

VIA COURIER

William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

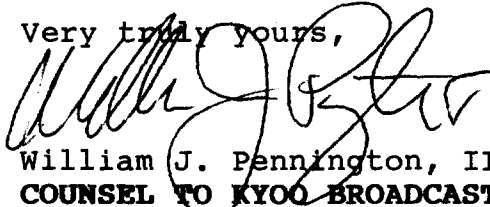
RE: MM Docket No. 93-186

Dear Mr. Caton:

Transmitted herewith, on behalf of KYOO Broadcasting Company, is an original and four copies of "Reply Comments of KYOO Broadcasting Company" in the above captioned proceeding.

Should there be any questions regarding this matter please do not hesitate to contact the undersigned.

Very truly yours,



William J. Pennington, III  
COUNSEL TO KYOO BROADCASTING  
COMPANY

Enc.  
WJP/tlt

cc: Certificate of Service

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**SEP 20 1993**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 93-186
Table of Allotments	)	RM-8258
FM Broadcast Stations	)	
(Halfway and Ozark, Missouri)	)	

To: Chief, Allocations Branch  
Mass Media Bureau

**REPLY COMMENTS OF KYOO BROADCASTING COMPANY**

KYOO Broadcasting Company ("KBC"), permittee of KYOO-FM at Halfway, Missouri, by its attorney, hereby submits its reply comments in the above-captioned proceeding. These reply comments are submitted pursuant to Notice of Proposed Rule Making in MM Docket No. 93-186, released July 13, 1993. KBC vehemently objects to the Comments and Counterproposal submitted by Missouri Radio, Inc. ("MRI") and the Comments and Counterproposal submitted by Lake Broadcasting ("LB"), as they amount to nothing more than a very thinly disguised attempt to (i) block the enhancement of KYOO-FM at Halfway, Missouri from a 3.0 kilowatts to a 6.0 kilowatts; (ii) block the proposed upgrade of facilities for Station KZPF(FM), from Channel 225A to Channel 225C2, at Ozark, Missouri; and (iii) blatantly abuse the Commission's Rules and Regulations associated with the allotment procedure in order to limit competition in Springfield, Missouri, a market where

principals in LB and MRI own/operate or have a vested family interest in existing broadcast facilities. In support, the following is stated:

**BACKGROUND**

1. KBC and Ozark Mountain Broadcasting, Inc. ("OMB"), permittee of KZPF(FM) at Ozark, Missouri, submitted a Joint Petition for Rule Making with the Commission requesting the substitution of Channel 256A for Channel 226A at Halfway, Missouri and the modification of the outstanding construction permit for KYOO-FM to specify operation on Channel 256A. In addition, it was also requested that Channel 225C2 be substituted for Channel 225A at Ozark, Missouri and the outstanding construction permit for KZPF(FM) be modified to specify operation on the upgraded channel. These two channel substitutions are interrelated, as Channel 225C2 can not be substituted for Channel 225A at Ozark unless Channel 256A is substituted for Channel 226A at Halfway. OMB agreed to reimburse KBC for all of the reasonable and prudent expenses associated with changing the frequency for KYOO-FM.

2. During the comment period in this proceeding, counterproposals were filed by LB and MRI seeking channel allotments in very small communities which would effectively block the channel substitutions and associated facility improvements jointly proposed by KBC and OMB. Specifically, MRI requested that Channel 256A be allotted to Humansville, Missouri as a first local broadcast service and LB requested that Channel

224A be allotted to Diamond City, Arkansas as that community's first local broadcast service. It must be noted that John Borders is the principal in LB and his son, J. Gregory Borders, is the principal in MRI. John Borders is the principal shareholder of the licensee of Station KGBX(FM) at Bolivar, Missouri. He also is a principal in the entity that operates Station KGMV(FM) at Aurora, Missouri under a Network Affiliation Agreement. Studios for both KGBX(FM) and KGMV(FM) are co-located in Springfield, Missouri. Ozark, Missouri is located just south of Springfield.

**HUMANSVILLE AND DIAMOND CITY ARE NOTHING MORE THAN  
CONVENIENT COMMUNITIES FOR ALLOTMENT PURPOSES USED TO  
BLOCK THE LEGITIMATE UPGRADES PROPOSED BY KBC AND OMB**

3. The circumstances surrounding the two counterproposals, submitted by MRI and LB, are more than just a little suspicious and bring forth many valid questions relating to the actual motives of the two proponents. KBC submits that it is much more than sheer coincidence that the two channel allotments were filed by members of the same family, mailed the same day, using the same postage meter, employing the same engineering firm, utilizing the same written text and style, and seeking channels in very small communities that specifically block the proposed facilities changes sought by KBC and OMB. Attached, as Exhibit 1, are copies of the envelopes which contained the "Comments and Counterproposal" that were served by LB and MRI on KBC's counsel. The Commission is asked to note the date and location both were

mailed as well as the number of the postage meter that was used in the mailing. All these features are identical.

4. KBC asserts that MRI and LB intentionally sought out communities for allotment which did not have any local broadcast service in an attempt to solidify their attempt to block the proposed facility improvements at Ozark and Halfway. In their counterproposals, both MRI and LB desperately attempt to extol the virtues of a first local broadcast service to Humansville and Diamond City, as if that point is their only justification for creating possible channel allotments that block the proposed facility upgrades at Ozark and Halfway. Interestingly, no other information about either Humansville or Diamond City that could not be found in a road atlas or at a local library was submitted by either of the proponents. KBC submits that it is very likely that neither principal in LB or MRI have visited or investigated the needs in the two communities or the ability of the small communities to support a new broadcast facility. The facts are clear, neither MRI or LB have any desire in providing broadcast service to either Humansville or Diamond City. The two small communities were chosen strictly for their convenience, as they represent a means to an end, the denial of the KBC/OMB proposal for legitimate facility improvements at Ozark and Halfway.

**MRI AND LB HAVE INTENTIONALLY SET OUT TO  
ABUSE THE COMMISSION'S RULES RELATING TO ALLOCATION PROCEDURES**

5. KBC asserts that it is quite obvious that MRI and LB are

attempting to abuse the Commission's Rules relating to the allocation of FM channels. Not only do the circumstances surrounding the comments and counterproposals submitted by both MRI and LB give a clear indication that no valid expression of interest exists in the channel allotments at Humansville and Diamond City, both Borders and one of his employees, Bob May, have repeatedly contacted Mel Pulley, a partner in KBC, seeking help in persuading OMB to sell the Ozark construction permit to Borders, or in the alternative, agree not to consent to a change in FM channels at Halfway so not to allow for an upgrade of the Ozark station. Attached as Exhibit 2 is the sworn affidavit of Mel Pulley, who states that in June and July of 1993 he was contacted by Borders, and met with him in Springfield, Missouri on three occasions to discuss these matters, and later, repeatedly received telephone calls from Borders and his employee, Bob May, continuing to seek help in the Ozark matter. Pulley states that Borders even went as far as to offer to give Pulley a new transmitter for KYOO-FM and to purchase the land for the station's tower site if Pulley consented to help Borders in his attempt to persuade OMB to sell the Ozark construction permit or stymie any possible upgrade of KZPF(FM) at Ozark.

6. KBC submits that Border's tactic of "if you don't give me what I want, I'll make sure that you don't get it", where the Commission's allotment rules are "used" by an individual to subvert the public interest is nothing more than a form of extortion and must not be tolerated. The Commission has stated

its intent is to deter abuse of allocation processes, and particularly, to prevent disingenuous filings which delay or obstruct legitimate proposals. See Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes, 5 FCC Rcd 3911 (1990). The Commission further stated that,

"expressions of interest have the status of representations to the Commission, as do any assertions contained in the pleadings filed with the Commission. Thus a statement of interest in operating a station made by a party who, in fact, lacks the requisite intent to construct and operate the proposed facility will henceforth be considered a material misrepresentation within the meaning of Section 73.1050/40 of the Rules and would be subject to prosecution pursuant to Section 502 of the Act, forfeiture pursuant to Section 503 of the Act or other appropriate administrative sanctions." Id.

7. KBC asserts that Borders has a vested interest in limiting competition in the Springfield, Missouri market, as he owns one FM facility in the market, KGBX, and operates another, KGMY, under a Network Affiliation Agreement. Both KGBX and KGMY derive the overwhelmingly majority of their advertising revenue from the Springfield market.

8. KBC submits that regardless of assurances that MRI and LB will file applications for the new FM channels if allotted at Humansville and Diamond City, and, if granted, construct the facilities, that the circumstances surrounding this matter, and the information brought forth herein, plainly show that neither MRI or LB have the requisite intent to construct or operate a new

FM station at either community.

9. If the Commission does chose to allot Channel 224A at Diamond City and Channel 256A at Humansville, KBC will be watching with great interest to see if both MRI and LB promptly file applications for construction permits, and if granted, immediately construct the new facilities as promised.

10. KBC notes that, although the pleadings were submitted **pro se** by both MRI and LB, they obviously were drafted by legal counsel. It is also known that Borders has retained Washington based communications counsel to handle his filings before the Commission in past years. KBC submits that, with knowledge of both the facts surrounding this matter and the obvious intent of MRI and LB, no self respecting attorney would sign his or her name, or commit his firm, to pleadings which seek to advance such a blatant abuse of the Commission's Rules and Regulations.

#### CONCLUSION

11. The flagrant action undertaken by Borders, combined with the manner by which both LB and MRI filed their comments and counterproposals in this proceeding, make it obvious that the channel allotments sought for Diamond City and Humansville represent thinly disguised attempts to block legitimate improvements to facilities at Halfway and Ozark. Additionally, it is clear that the Commission has an interest in curtailing the type of blatant abuse of its rules and policies relating to FM channel allocation advanced by MRI and LB. This abuse in no way advances the public interest. Thus, the counterproposal's



submitted by LB and MRI must be seen for what they are, a sham, and rejected in total.

WHEREFORE, KYOO Broadcasting Company respectfully requests that the Commission dismiss the "Comments and Counterproposal" of both Missouri Radio, Inc. and Lake Broadcasting seeking new channel allotments to Diamond City, Arkansas and Humansville, Missouri and (i) substitute Channel 256A for Channel 226A at Halfway, Missouri and modify the outstanding construction permit for Station KYOO-FM accordingly and; (ii) substitute Channel 225C2 for Channel 225A at Ozark, Missouri and modify the outstanding construction permit for Station KZPF(FM) accordingly.

Respectfully submitted,

**KYOO BROADCASTING COMPANY**



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William J. Pennington, III  
Its Attorney

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Pawleys Island, SC 29585  
(803) 237-2591

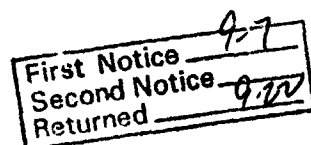
September 19, 1993

**EXHIBIT 1**

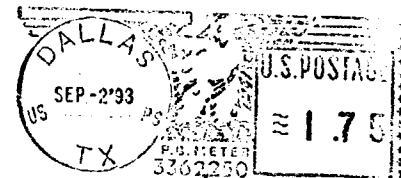
J. GREGORY BORDERS  
1909 COLUMBIA DR.  
RICHARDSON, TX. 75081

P 874 488 988

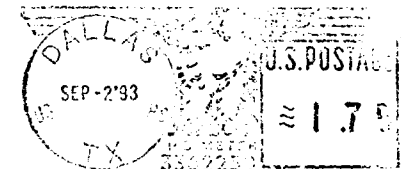
MAIL



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P. O. BOX 2506  
PAWLEYS ISLAND, S.C. 29585



J. Borders  
5930 LBJ, St. 400  
Dallas, Tx. 75240



William J. Pennington III  
P. O. Box 2506  
Pawleys Island, S. C. 29585

**EXHIBIT 2**

## AFFIDAVIT

COUNTY OF POLK )  
STATE OF MISSOURI )

MEL PULLEY, being duly sworn upon oath deposes and says:

That he is a resident of Bolivar, Missouri and partner in KYOO Broadcasting Company, permittee of Radio Station KYOO-FM at Halfway, Missouri.

That KYOO-FM is authorized to operate on FM Channel 226A (93.1 mHz.) with 2.67 kilowatts with an antenna height of 367 feet above the average terrain.

That he filed, with Ozark Mountain Broadcasting, Inc., a joint petition for rule making seeking changes in the FM Table of Allotments which would allow KYOO-FM to increase its output power so to operate with the maximum facilities authorized for Class A operation on FM Channel 256A.

That the changes in the Table of Allotments would also allow FM Station KZPF at Ozark, Missouri, on FM Channel 225A, to upgrade its facilities so to operate as a Class C2 facility on FM Channel 225.

That both himself and the principal in Ozark Mountain Broadcasting, Inc. have stated that if the changes are made in the Table of FM Allotments they would both immediately file applications for construction permits seeking the facilities changes, and if granted authority immediately construct the new facilities.

That, in his opinion, these proposed changes would greatly increase service to the public.

That he met personally with John Borders, the principal in <sup>Lake Broadcasting</sup> ~~KGBX~~, several times in June and July of 1993 where Borders sought help from him to persuade the principal in Ozark Mountain Broadcasting, Inc., Gary Lynch, to sell him the construction permit for KZPF(FM) at Ozark.

That Borders offered to purchase land and provide a new transmitter for him if he would not consent to change KYOO-FM's frequency to Channel 256A, thus not allowing the Commission to substitute Channel 225C2 for Channel 225A at Ozark and permitting KZPF to upgrade to Class C2 status.

That Borders called him at least three times after the meetings in June and July still seeking help in either blocking an upgrade of KZPF(FM) or persuading Lynch to sell the construction permit for KZPF(FM) to him.

That he has also been contacted by Bob May, an employee of Borders concerning help in persuading Lynch to sell the KZPF(FM) construction permit.

That Borders currently owns KGBX(FM) at Bolivar, Missouri, a Class C2 facility, and operates another Class C2 FM facility, KGMY at Aurora, Missouri, under a lease management agreement.

That both stations operate from studios in Springfield, Missouri and garner an impressive audience share in the Springfield radio market.

That, in his opinion, Borders has taken a number of measures over the past months to either block an upgrade of KZPF(FM) or make the permittee of the station sale the construction permit to him.

That the "Comments and Counterproposal" filed by Missouri Radio, Inc. (Borders), seeking a first local service on FM Channel 256A at Humansville, Missouri, is nothing more than an attempt to either make Ozark Mountain Broadcasting, Inc. sell the construction permit for KZPF(FM) or block any upgrade of the facility.

That ~~John Borders~~, the principal in Lake Broadcasting, whose "Comments and Counterproposal" filed in this proceeding seeking a first local service on FM Channel 224A at Diamond City, Arkansas is the ~~son~~ of ~~John Borders~~, principal in Missouri Radio, Inc. and is nothing more than another attempt to make Ozark Mountain Broadcasting, Inc. sell the construction permit for KZPF(FM) or block any upgrade of the facility.

That the fact that both Missouri Radio Inc.'s and Lake Broadcasting's comments and counterproposal's are identical in form of text and style, were mailed the same day and postage paid on the same postage meter, utilize the same engineering firm, seek specific channels in small communities that block the proposed enhancement at Halfway and upgrade at Ozark, and that at least one, and possibly both, of the proponents for the counterproposals have a great deal to gain if proposal for Halfway and Ozark is denied give a clear indication that the counterproposals represent an abuse of the Commission's allotment procedures in an effort to limit competition in the Springfield, Missouri radio market.

That his conclusion is bolstered by the fact that Borders has repeatedly called and/or arranged meetings with him in an effort to seek help in either blocking the Halfway/Ozark proposal or getting Ozark Mountain Broadcasting, Inc. to sell the construction permit for KZPF(FM) to Borders.

That it is his opinion that the actions taken in this proceeding by Missouri Radio, Inc. and Lake Broadcasting represent an abuse of the Commission's Rules and Regulations and warrant a dismissal of the comments and counterproposals filed by those parties in this proceeding.

Mel Pulley  
Mel Pulley

Subscribed and sworn to before me this 16<sup>th</sup> day of September, 1993.

Sandra Divin  
Notary Public

SANDRA DIVIN  
Notary Public  
Notary Seal  
STATE OF MISSOURI

My Commission expires:

December 8, 1995

SANDRA DIVIN  
NOTARY PUBLIC  
STATE OF MISSOURI  
POLK COUNTY  
My Comm. Expires DEC 08, 1995

**CERTIFICATE OF SERVICE**

I, William J. Pennington, III, certify that I have this 19th day of September, 1993 sent by first class United States Mail, postage prepaid thereon, copies of the foregoing Reply Comments of KYOO Broadcasting Company. to:

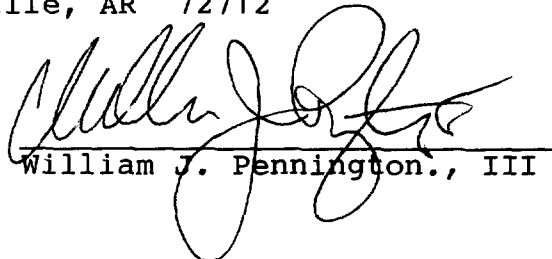
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Demaree Media, Inc.  
Station KFAY-FM  
Post Office Box 878  
Fayetteville, AR 72712



William J. Pennington., III